

## **10 KEY TAKEAWAYS ON THE INDIA NZ FTA**

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### **1. The Politics of the Deal**

- 1.1 New Zealand has minimal leverage with India in a trade negotiation at the best of times. Its standard demands, led by access to India’s market for dairy products, are politically untenable for a country with 100 million small dairy farmers and a politically active populace. With virtually no tariffs, we have relatively little to offer of value in return beyond knowhow that can assist India’s own development and study or work opportunities for some of its middle-class. India’s resources are also stretched through negotiations with much more significant countries, including the United States.
  
- 1.2 When Prime Minister Luxon promised to deliver a free trade agreement (FTA) with India during this term of government he gave away what little negotiating coin we still had. India set the terms within which New Zealand had to negotiate. Sensitive sectors, notably dairy, were excluded, and an utterly reckless commitment to invest tens of billions in India over 15 years will allow India to revoke tariff cuts and quotas when we can’t deliver.
  
- 1.3 Other gains, such as quota access for apples, kiwifruit and Mānuka honey are at risk if the government fails to deliver on as-yet-incomplete action plans designed to elevate India’s productivity of apples, kiwifruit and honey, and which need to be underway before the agreement enters into force. It is utterly perverse that the government would agree to obligations that are intended to make Indian producers more effective competitors in areas where New Zealand exporters expect to gain.

- 1.4 The resulting agreement is a short-term political trophy for Luxon, because it was negotiated under a shield of secrecy and spun by supporters before anyone had access to the text. Now we can analyse the detail, the downsides of the deal are laid bare.
- 1.5 Politicking has not stopped with National. New Zealand First's pre-election grandstanding and misrepresentations have fuelled racist attacks on local and future migrant Indian communities. There is really little difference between the labour mobility provisions in this agreement and other FTAs. Regrettably, political race-baiting has opened the door to broader racist attacks on the Indian community from Māori and non-Māori.
- 1.6 That distasteful distraction, in a void of access to the text, has displaced the debate we should have been having, and left analysis and informed engagement to a select committee that has no authority to change anything, and no political will for a majority to do so. That will only occur if Labour rethinks its position in light of the facts and withholds the votes needed for the implementing legislation.

## 2. **The Economics of the Deal**

- 2.1 India's FTA schedule has about 12,500 tariff lines over almost 800 pages. Some are cut immediately, some remain unchanged. In between there are phase-ins over periods of up to 10 years, and tariff rate quotas (TRQs allow a quantum of product into India at a lower tariff or duty free, above which higher tariffs cut in).
- 2.2 MFAT's *National Interest Analysis* (NIA) projects that gains to New Zealand from the FTA by 2037, after 10 years, when it expects most of the tariff cuts to have come into force, will be just 0.07% of GDP or \$401 million relative to the non-FTA baseline. That is minimal before we factor in the well-documented problems with the assumptions that underpin this kind of econometric modelling and other factors, such as trade diversion.
- 2.3 What is perhaps most extraordinary is a seeming own goal for exports of apples, kiwifruit and Mānuka honey: in return for tariff rate quotas on those products, New Zealand has agreed to develop action plans to be implemented within 5 years that are designed to enhance India's production and quality of those products, and hence enable its domestic producers to compete with imports from New Zealand. This is reminiscent of New Zealand exporting kiwifruit vines to Chile, which then became a major competitor.
- 2.4 In addition, it is assumed that India's domestic market will continue to expand dynamically at the rate it has. Yet India's GDP growth has been slowing from 9.7% in 2021 and is expected to remain under 7% for the next few years. While New Zealand will receive tariff cuts over the next decade for a number of products, exporters will be competing in that market with many other countries that India has negotiated FTAs with, including the EU, UK, UAE, Australia and EFTA (Switzerland, Norway, Iceland, Liechtenstein).

## 3. **India's unilateral clawbacks**

- 3.1 India has built into the agreement two significant opportunities to claw back tariff cuts on the basis of its unilateral determination that New Zealand has not met its obligations:

- (i) The TRQs for apples, kiwifruit and Mānuka honey are contingent on New Zealand delivering on Action Plans for each within short time-frames. While the mandatory elements of these plans are described in the Agreement, they are still being finalised and are not part of the FTA. Nevertheless, these action plans must be underway before the FTA enters into force, which may well militate against a rapid ratification on the Indian side.
  - (ii) India can also unilaterally claw back tariff reductions to an unpredictable degree based on its assessment that New Zealand has failed to deliver on its investment commitment of USD20 billion over 15 years and what the cost of that to India entails.
- 3.2 Under Chapter 14: *Economic Cooperation and Technical Assistance* the Parties will implement concrete actions on priorities they have agreed and subject to available resources. These relate, in particular, to the thematic areas of agricultural and non-agriculture that are priority to India.
- 3.3 An *Agricultural Productivity Partnership* is established under Chapter 14 and will be governed by a Joint Agriculture Productivity Council. The aim is to help increase returns to Indian farmers, fishers and producers and facilitate engagement across the value chain between India and New Zealand. Section A of Annex 14A: *Agricultural Cooperation and Technical Assistance Thematic Areas* identifies priority agriculture sectors (forestry, horticulture, apiculture and honey, livestock, fisheries and aquaculture, wine), and Section B two cross-cutting thematic areas (organics cooperation, cooperatives).
- 3.4 Annex B *Non-agriculture Cooperation and Technical Assistance Thematic Areas* specifies four areas: traditional knowledge and traditional medicine (see below), tourism, audio-visual production and sports.
- 3.5 Working groups may be established in the agriculture or non-agriculture thematic areas or sectors, with work programmes, or action plans where work plans are considered too resource-intensive or inappropriate. The Parties have to agree on the priorities for these initiatives based on their interests and resources and the expected benefits.
- 3.6 The Annex includes a long list of possible forms of “cooperation” and “technical assistance”, which include introduction of high-yield, low-input plant varieties, exchange of high-yield seeds, establishing Centres of Excellence, skills development and training, joint research and development – all of which seem intended to expand production within India of precisely the products that New Zealand aims to export there. However, which sectors or products that applies to are to be decided jointly.
- 3.7 Here is the rub: “cooperation” on apples, kiwifruit and Mānuka honey is mandatory and the tariff rate quotas in those products depend on New Zealand making the resources and support available to fulfil product-specific Action Plans within specified timelines. Annex 2B: *Implementation and Review of Economic Cooperation Action Plans and Related Tariff Rate Quotas Action Plans* and Article 14A.3.6 and 14A.4.4) explicitly say that continued market access liberalisation through TRQs is contingent on reviews showing tangible progress under the Actions Plans on apples, kiwifruit and Mānuka honey set out in Annex 14A *Agricultural Cooperation and Technical Assistance Thematic Areas*.

- 3.8 The Annex sets out activities that must be included in the Action Plans for kiwifruit (Article 14A.3.4), apples (Article 14A.3.5), and honey (Article 14A.4.3) which are aimed at enhancing production, productivity, fruit quality and commercialisation in India. The Action Plans are being developed in accordance with a *Memorandum of Cooperation on Horticulture between the Ministry of Agriculture and Farmer's Welfare, India and the Ministry of Primary Industries, New Zealand*, signed in March 2025 (Article 14A.3.3). However, the Plans are not yet finalised so it is impossible to assess their implications for the export market or whether New Zealand would have difficulty delivering on them. Despite that, they have to be implemented before the agreement enters into force. Whether they will be available before the select committee hearing on the FTA, or the parliamentary vote on implementing legislation, remains to be seen.
- 3.9 These obligations give India leverage to cut back market access if New Zealand fails to deliver to India's satisfaction. The Action Plans are in place for 5 years, although they may be extended by agreement. The Joint Agriculture Productivity Council (JAPC) will meet every 6 months to review progress. If India says New Zealand has not been able to fulfil its commitments it can initially raise it with New Zealand. If they cannot agree the issue is elevated to the JAPC, from there to the Joint Commission, and upwards again to the parties' Ministers. If there is still no agreement India can notify that it is suspending the quota market access for the relevant product. That suspension can continue until India believes NZ has met its obligations.

#### **4. Investment Commitment a Free Pass to India**

- 4.1 New Zealand is obliged to ["shall"] "promote" foreign direct investment by New Zealand investors into India with the aim to increase foreign direct investment (FDI) inflows by USD20 billion (approximately NZD34 billion at current exchange rates) within 15 years of the FTA's entry into force. India has said it will establish a dedicated investment desk to assist those New Zealand investors.
- 4.2 India first introduced such a provision in its FTA with EFTA countries (Switzerland, Norway, Iceland, Liechtenstein) in 2024, which it described as a "binding pledge".
- 4.3 There is zero possibility that New Zealand can deliver that quantum of investment. New Zealand's FDI total outflow – investment abroad to all countries – in 2025 was NZD1.463 billion (one and a half billion dollars). The average for the decade was minus NZD28 million because it was negative (net disinvestment) in many years (see Statistics NZ table BOP061AA).
- 4.4 Even if the target were met, is hard to see how New Zealanders would benefit from such investment, beyond the investors' shareholders. Instead, capital that is sorely needed for investment in Aotearoa would have been exported offshore, with the government's support.
- 4.5 Exporting such massive amounts of capital would be flying in the face of the current balance of payments position. Because New Zealand runs a chronic current account deficit (largely driven by the outflow of profits on foreign investment in New Zealand) any additional financial outflows of direct investment to India would require either additional exports, fewer imports or higher overseas debt to compensate. The New Zealand dollar would fall in value, making imports more expensive and overseas debt more expensive to service.

- 4.6 The process to assess New Zealand’s compliance with this commitment is set out in Articles 9.9.6 to 9.9.12. An Investment Committee will review progress towards achieving the investment objective after 5, 10 and 15 years. It will make decisions by consensus, giving India (or New Zealand) a veto. If, at the 15 year review, India considers New Zealand has not fulfilled its commitment, India can request consultations with New Zealand. If the matter remains unresolved at the end of 8 months of consultations, it is elevated to the Joint Commission. If they cannot resolve the matter within 6 months, it is referred to the parties’ Ministers. If it is still not fully resolved within 6 months, New Zealand can ask for another 3 years’ grace period, but that would need India’s consent.
- 4.7 If India still determines that New Zealand has not fulfilled its commitment, it may take “proportionate remedial measures to rebalance the concessions” in the FTA by increasing tariffs it has cut or revoking TRQs. That would likely affect sensitive products for India, such as wine, industrial or horticulture products, which are also amongst the last to be cut, meaning the overall benefits New Zealand secured from those tariff cuts would be minimal. India has to tell New Zealand it is doing this, but New Zealand cannot do anything about it.
- 4.8 This “rebalancing” is meant to be temporary until the objective of New Zealand’s FDI commitments have been met. But, because this chapter is not subject to dispute settlement this would be for India to decide and New Zealand would have no recourse to dispute India’s assessment of compliance or the quantum of harm caused.
- 4.9 If these “rebalancing” tariffs continue beyond 5 years New Zealand can ask for consultations at the Joint Commission. If the Commission cannot resolve this (by consensus) within 6 months, the matter is elevated to the ministerial level. And if they have not agreed within 6 months, the hiked tariffs continue until the next scheduled review, and are examined every 3 years after that.
- 4.10 It is also worth noting that this FTA’s wording differs from the EFTA agreement, where a footnote linked achieving the investment target to an Indian GDP growth rate of 9.5%. If, as anticipated, India’s GDP growth rate continues to decline, EFTA will have a justification to reduce its commitment. There is no such leeway in the wording of footnote 2 in chapter 9 of the New Zealand FTA.

## 5. **Te Tiriti o Waitangi goes backwards**

- 5.1 Te Tiriti o Waitangi is referred to only twice in the entire FTA. The first reference to Te Tiriti/The Treaty is in Chapter 13: *Cultural, Trade, Traditional Knowledge and Economic Cooperation*. This chapter is modelled on recent chapters in New Zealand’s FTAs entitled *Indigenous Peoples Trade and Economic Cooperation*. India apparently rejected reference to Indigenous Peoples in the title of this FTA.
- 5.2 While the chapter talks about “preserving and promoting traditional language, culture and heritage that are vital for economic benefit and cultural continuity”, and “should be implemented in a manner consistent with te Tiriti o Waitangi/the Treaty of Waitangi”, Indigenous Peoples, knowledge holders and traditional communities, including Māori, have been shut out of the negotiations that are apparently making rules about (and for?) them.

- 5.3 The Crown has an obligation under the Mediation Agreement with Ngā Toki Whakarururanga in 2021 to ensure they have genuine and effective influence on negotiations. Input has been facilitated in recent years by confidential access to negotiating texts. Despite the best endeavours of ministers and officials, India refused to allow access to draft texts, so there has been minimal ability to input or have genuine influence.
- 5.4 It also seems clear that India insisted that the limited references to Indigenous Peoples in the text are limited to Aotearoa. That reflects India’s position, expressed in a reservation to the UN Declaration on the Rights of Indigenous Peoples and reiterated in footnote 2 in the chapter, that all people in India post-Independence are indigenous.
- 5.5 The Objective of the Chapter “affirms” the “importance of defensive protection mechanisms that assist in preventing the misappropriation of traditional knowledge” but this agreement has none of them. Even the Treaty of Waitangi Exception applies only to “more favourable treatment” to Māori, not to effective protections.
- 5.6 A number of important international agreements are “recognised” or “affirmed”, but because work is done on them in other forums that work is not to be duplicated under the FTA.
- 5.7 Any work under the chapter must also be “within the existing framework” of the Agreement. There is no working group or specific committee responsible for the chapter; instead, decisions will be made through the top-tier Joint Commission of the Agreement that has no place for Indigenous Peoples. The form of any activities, such as workshops, exchanges and awareness raising, must be agreed by the Parties. Participation by Māori in cooperation activities would be “as deemed appropriate”, presumably requiring India to agree.
- 5.8 The chapter is unenforceable, requires both Parties to agree to take action on any particular kaupapa, and depends on both Parties making resources available, with no legal or financial obligation to do so.
- 5.9 The second reference to Te Tiriti o Waitangi is the Treaty of Waitangi Exception (Article 18.5). Following the Waitangi Tribunal’s inquiry into the TPPA (Wai 2522), and a Mediation Agreement between the claimants and the Crown, they have co-developed a new best-practice Tiriti o Waitangi protection to replace the Exception that dates back to 2001. This omits the problematic wording in the 2001 Exception, which only applies to measures the Crown decides are necessary under Te Tiriti/The Treaty, which involve “more favourable treatment” or preferences to Māori, and can be challenged as arbitrary or unjustified discrimination or a disguised restriction on trade.
- 5.10 MFAT tabled the new Tiriti o Waitangi protection text for the first time in this negotiation. India has clearly rejected it. The Agreement retains the flawed 2001 exception, which the Crown’s National Interest Analysis misleadingly claims “enables the Crown to meet its obligations to Māori under Te Tiriti o Waitangi/the Treaty of Waitangi” (page 136).
- 5.11 Reversion to that flawed text raises serious concerns about when and how the Crown will insist that the more effective protection is adopted in future agreements.

## 6. Little Difference on Labour Mobility

- 6.1 Political opportunism that targets this agreement with racist attacks on Indian immigrants is a diversion from the real issue. This agreement is no different from many others in relation to labour mobility and immigration. The habit of giving access to a quota of people has occurred over a long period, with each addition reducing New Zealand's ability to control migration in the light of its skills needs and ensuring the necessary infrastructure and services, such as housing, health and education, is available for the new immigrants when they arrive. The Productivity Commission inquiry in 2021-2022 *Immigration – Fit for the Future* highlighted these issues, but they have still not been addressed.
- 6.2 India has a long-standing demand in trade negotiations for temporary access for its skilled workers into other countries. This takes five forms in the FTA, none of which is remarkable. New Zealand must implement these arrangements within a year of the FTA entering into force. In most instances there cannot be a dispute about individual cases; that could only arise from a pattern of practice and once all domestic administrative remedies must have been exhausted.
- 6.3 Annex 8C is the standard trade in services approach, whereby temporary entry is guaranteed for a person (not a company) to deliver a service, subject to specified conditions and limitations, but not to enter the employment market. In the FTA New Zealand has applied this to short-term business visitors, for example to a trade fair, and servicers of equipment; corporate executives, managers and specialists for a maximum three years; an existing employee of an Indian firm to deliver a contract for up to a year in specific professions; and independent professionals, including for IT, for up to a year where there is a shortage.
- 6.4 Those gaining entry still need to comply with visa requirements and licensing and qualification requirements where those apply. The FTA seeks to streamline their entry. Where they are granted entry for more than a year they can bring their partner and dependent children under 20 for the time they are in Aotearoa. A dispute can only be lodged where a pattern of breach is alleged and all administrative remedies, such as reviews, have been exhausted.
- 6.5 Secondly, small numbers of visas are available for qualified people in Iconic Indian occupations: yoga instructors (100 visas); Indian chefs (250 visas); Music teachers (50 visas); Ayush practitioners (200 visas).
- 6.6 The third category is skilled workers where New Zealand has identified a skills shortage: IT workers (1000 visas), engineers (1000 visas), construction and building project managers (700 visas), primary and secondary teachers (500 visas), and registered nurses and physiotherapists (900 visas). They can stay for a maximum of 3 years, then must leave and cannot return to New Zealand under a work visa or permit for 3 years. They must have necessary qualifications and professional registration or licence, and meet IELTS language requirements.
- 6.7 A less common category is for students who meet immigration requirements and enrol for a recognised education institution. They can work for 20 hours a week based on policies about working under student visas. Once the student completes their full degree programme, subject to fulfilling immigration requirements including labour market tests, they can stay for a specified maximum time: graduates with a bachelor degree can stay 2 more years, with a masters degree 3 more years and with a doctorate 4 more years. Those with a 1st class honours degree in a STEM field, including IT, may stay an extra 2 or 3 years.

- 6.8 It is important to note that New Zealand has no cap on international students. Instead, it encourages them, because years of government disinvestment in tertiary education has left universities and polytechnics dependent on international fees, and has spawned a private industry of tertiary providers of variable quality. The problem here is not student numbers, but government policy and the need for more effective and rigorous scrutiny of recruiters and agents.
- 6.9 The final category is a working holiday visa, set out in a sideletter. It allows for 1000 multiple entry visas for a one-off temporary stay of 12 months, subject to a series of conditions including age (18-30 years), medical insurance, no dependents, a tertiary qualification and language proficiency, onward ticket, funds for support, etc, with work being incidental to the visit. The scheme is to be in place within 2 years of the FTA entering into force.

## 7. Traditional Knowledge and Genetic Resources

- 7.1 India has another long-standing concern to secure recognition of traditional knowledge and genetic resources and to rebalance the western intellectual property (IP) regime, especially the World Trade Organization (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).
- 7.2 Māori have similar issues over western intellectual property rights, which in trade agreements override rangatiratanga and kaitiakitanga over mātauranga Māori in breach of te Tiriti o Waitangi.
- 7.3 India has persistently proposed a review at the WTO of the relationship of TRIPS to the Convention on Biological Diversity, protection of traditional knowledge and folklore. New Zealand has not supported that call. Surprisingly, the reference to that matter is not in the FTA's *Intellectual Property* chapter, but in Article 13.2 of the unenforceable *Culture, Trade, Traditional Knowledge and Economic Cooperation* chapter. That provision merely "affirms" the instruction in the WTO Doha Declaration to examine that relationship. It also notes that the Parties must avoid duplication of any such work in any other forum. In other words, this matter will remain at the WTO with no obligation on New Zealand to change its position or to engage it under this FTA.
- 7.4 A section of the chapter "affirms" the WIPO treaty on *Intellectual Property, Genetic Resources and Associated Traditional Knowledge* and the work of the WIPO *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, which made some advances, but which stopped well short of what Indigenous Peoples required.
- 7.5 Where the FTA recognises traditional knowledge, it is treated as if it can be assimilated within, or co-exist with, western IP. Section H of Chapter 11: *Intellectual Property* "recognises" the relevance of IP systems to traditional knowledge that is associated with genetic resources, *when traditional knowledge is related to those systems* – ignoring the reality that they are in direct conflict with each other. Likewise, an exchange of views and information is meant to enhance the understanding of *IP-related aspects* of genetic resources, traditional knowledge, and traditional cultural expressions. Māori are not referred to; such engagement is to be conducted through officials, with participation by "relevant stakeholders ... if appropriate and practicable".

- 7.6 An operational provision on how to conduct patent examination to *take account of traditional knowledge associated with genetic resources* says nothing about obligations to enhance protections for mātauranga Māori or taonga species. That ignores the Wai 262 and Wai 2522 Waitangi Tribunal reports and breaches te Tiriti o Waitangi.

## 8. Rongoā and Traditional Medicine

- 8.1 Traditional healing therapies and practices is another area of potential mutual benefit for Aotearoa and India, as Māori pointed out during the negotiations. There are provisions relating to traditional medicine in numerous parts of the FTA text. But its cultural dimension and the responsibilities of knowledge keepers as kaitiaki are distorted by the commercial lens and objectives of the “free trade” agreement.
- 8.2 India perpetuated that contradiction and pursued a combination of commercial and public policy goals. It has long sought to use “trade in services” agreements to advance its interests in exporting health workers. It is also understandable that ayurveda exporters might find a market in Aotearoa, given the number of people of Indian descent living in New Zealand is 292,000 or nearly 6% of our population and the third largest ethnic group in the country. But the assumption that there is an export market for rongoā in India seems bizarre. What might motivate the Indian population to buy Rongoā Māori when they already have well-established traditional medicines in their own country?
- 8.3 The “trade” lens gives rise to other contradictions. The services chapter has an Annex 8G on health-related and traditional medicine services, which include any service related to the practice of Rongoā Māori, Ayurveda, Siddha, Unani and Sowa-Rigpa fields of medicine. They are treated as one with western private health services, despite rongoā having profoundly different conceptual foundations, practices and responsibilities.
- 8.4 Clause 8G.4 refers to “trade in traditional medicine services”, including on research and development. While this positively encourages stronger engagement between the professional bodies and recognition authorities in each country, and the harmonisation of health standards, there is no role for the practitioners to safeguard the integrity and health and cultural safety of their practice.
- 8.5 The Annex seeks to expedite verification and licensing procedures, encourage mutual recognition of qualifications and encourage steps to harmonise standards, without recognising these differences and that mutual recognition and harmonisation may be inappropriate. The Working Group combines the two categories, peopled by officials without any role for or recognition of Rongoā practitioners as kaitiaki. They report to the Committee on Trade in Services that oversees western commercialised services.
- 8.6 The same mistreatment of Traditional Knowledge and Traditional Medicines is evident in the annex on non-agricultural cooperation to the Chapter 14 *Economic Cooperation and Technical Assistance*. Article 14B.2 says the parties may undertake cooperation and technical assistance, while “respecting any rights, interests, duties, and responsibilities” of holders of traditional knowledge and traditional systems of medicine. But traditional healers, including rongoā experts, were not asked if they wanted this form of cooperation, were excluded from the development of these provisions, and have no control over their implementation.

- 8.7 Moreover, there is nothing that provides any protections for Māori to exercise those “rights, interests, duties, and responsibilities”. The focus is on commercial and export opportunities for profit, not cooperation between knowledge holders in Aotearoa and India to bring mutual benefits to them.
- 8.8 The text provides for cooperation on matters that the Crown knows, or should know, are the antithesis of mātauranga. One proposed area for cooperation is research collaboration to “enhance *scientific validation, evidence based practices, and innovation through the use of biotechnology*” (Article 14B.2.2(c)), rather than enhancing the traditional knowledge and traditional systems of medicine themselves. In recent times, western “science” and “evidence based” practices have been used to attack the very validity of mātauranga.
- 8.9 Likewise, Māori objections to biotechnology as a violation of the integrity of whakapapa should be well understood by the Crown, including MFAT officials. Biotech has the potential to positively harm the traditional medicines that are relied on by practitioners; for example, creating new special of Mānuka may yield more honey but easily hybridise with native species that put the safety of traditional medicine practice at risk.
- 8.10 Another clause proposes strengthening cooperation on the development and use of “*emerging technologies*” for the preservation and restoration of traditional knowledge and traditional medicine systems, including *AI-based software, e-commerce, and digital distribution platforms* (Article 14b.2.2(h)). This assumes that traditional knowledge holders want to “protect” traditional medicine knowledge by sharing it using modern technologies. It ignores the essence of mātauranga as a living knowledge that is invested in people who have responsibilities to safeguard it and evolve it to meet the needs of their descendants.
- 8.11 Further, there is nothing in this provision that recognises the need for, let alone provides, protections for data sovereignty or data governance in those AI-based software, e-commerce, or digital distribution platforms. Without control over that mātauranga, there cannot be respect for the rights, interests, duties, and responsibilities of Māori. These same issues were central to the Waitangi Tribunal Wai 2522 claim on e-commerce in the TPPA. The Tribunal found the lack of protections breached the Crown’s Tiriti obligations, and that the 2001 Treaty Exception along with several others was not enough. It is inconceivable that MFAT officials have repeated that breach through what is proposed here.
- 8.12 Article 13.3 of the *Cultural, Trade, Traditional Knowledge and Economic Cooperation* chapter also raises the possibility for cooperation activities relating to “traditional medicines and healing systems” and training, research and teaching in AYUSH and Rongoā Māori practitioners (Article 13.3.2(c)). But this depends on both India and New Zealand according it priority and the necessary resources. Neither those decisions, nor the activities themselves, would be driven and controlled by the practitioners themselves.

## 9. The mirage of sustainable development

- 9.1 A major factor in the backlash against FTAs is people’s experience that they are designed for corporate interests and impact negatively on the livelihoods of the poor, especially farmers, fishers and workers, heighten inequalities, and undermine domestic self-sufficiency, not strengthen it.

- 9.2 The recent inclusion of sustainable development chapters in FTAs raises those contradictions. Article 2 of Chapter 12: Trade and Sustainable Development says:

*“The Parties agree to promote international trade in such a way as to contribute towards sustainable development for eradicating poverty and hunger; including towards broad-based, sustained and inclusive economic growth, social development, high levels of environmental protection and progress towards long-term strategies for transition, and to work to integrate and reflect this objective in their trade relationship”.*

- 9.3 But there is no enforceable obligation anywhere in this FTA to achieve that objective. Even the Action Plans New Zealand agreed to implement on apples, kiwifruit and Mānuka honey are designed for larger-scale commercialisation.
- 9.4 The Sustainable Development chapter also reflects India’s long-standing position that labour and environment provisions do not belong in trade agreements, and are used for protectionist reasons to undermine the comparative advantage of cheaper-labour countries. Similarly, India has insisted on differential obligations of developing countries in responses to the climate crisis.
- 9.5 There are other contradictions. Article 12.8 repeats New Zealand’s dilemma in other recent FTAs, that it commits to implement its obligations and commitments under the UNFCCC and Paris Agreement that it has backed away from. And it promises not to lower environment and labour standards to advance trade and attract investment.
- 9.6 The requirement to “endeavour” to cooperate on climate mitigation and adaptation includes another potentially contradictory combination of “sharing knowledge and evidence-based innovations, including traditional, local and Indigenous knowledge, especially technological innovations, to support solutions to climate change, including climate-smart and resilient agricultural production”.

## **10. A Genuine Pre-ratification Review**

- 10.1 Political objectives have driven the negotiation of this deeply problematic agreement. It is no surprise that the governments wanted to keep it secret until it was signed. As a result the agreement has no social licence, no democratic legitimacy and no Tiriti compliance.
- 10.2 This Agreement can still be subject to effective scrutiny before any steps are made to ratify it so it is binding on Aotearoa New Zealand. That requires the Labour Party to withdraw its support, the select committee to conduct a genuine, open, un-predetermined inquiry into the agreement, not the rubber stamping exercise that has been its standard approach in recent years, and for Parliament not to pass the implementing legislation. Finally, it requires the National-led government to listen and act in a manner consistent with democracy and Te Tiriti.

**30 April 2026**